

## AGREEMENT

### CITY OF DURHAM AND DUKE UNIVERSITY

Whereas Duke University desires to continue providing fare free public transit service to its students, faculty, staff, and other people within the community, and

Whereas Duke University desires to provide its students, faculty, staff and other people within the community with fare free access to the public transit service to be provided by the City of Durham known as the Bull City Connector.

Now, therefore be it resolved as follows:

1. Purpose: The purpose of this Agreement is for Duke University (hereinafter referred to as Duke) to contract with the City of Durham (hereinafter referred to as City) to continue the provision of the fare free public transit service known as the Bull City Connector (hereinafter referred to as BCC). For the purposes of this Agreement, "City" shall include the City of Durham itself and/or any contractor, subcontractor or assignee that operates public transit services on behalf of the City of Durham.
2. Term: This Agreement shall be effective August 1, 2012 and shall continue for one year.
3. Cooperative Efforts: This Agreement shall be liberally construed in order to promote a harmonious relationship between the parties with regard to the provision of the BCC. The parties covenant to furnish their best skill and judgment and to fully and effectively cooperate with each other to accomplish the purpose and intent of this Agreement. In the event a problem arises that this Agreement does not directly or indirectly address, the parties agree to work with one another to determine a mutually satisfactory solution.
4. Nature of Relationship: The parties agree that in the performance of this Agreement, nothing herein shall construe or be construed as creating a partnership, agency, or joint venture or other similar relationship between the City and Duke and/or any of either party's subcontractors. The personnel employed by the City and/or any of the City's subcontractors shall not be employees of or have any contractual relationship with Duke, and vice versa.

5. Scope: The City shall operate, maintain, and be in direct control of the BCC, and shall be responsible for any and all costs associated with the BCC. The City will be responsible for providing all of the personnel, fringe benefits, services, materials, supplies, utilities, insurance, licenses, permits, facilities, and equipment that is needed to provide the BCC. Duke University will publicize and promote the use of the BCC among its students, faculty and staff.

The BCC shall operate along the route illustrated in Exhibit 1 to this Agreement. The hours of operation of the BCC shall be from 7:00 am to 10:00 pm, Monday through Thursday, 7:00 am to 12:00 am (midnight) on Friday and 8:00 am to 12:00 am (midnight) on Saturday. The frequency of service shall be every 15 minutes from 7:00 am to 6:00 pm, Monday through Friday and every 20 minutes after 6:00 pm and on Saturdays. In the event either party desires a modification to the BCC service written notice of same shall be provided to the other party at least three (3) months prior to the desired effective date of the modification, which shall be mutually agreed upon by the parties at least two (2) months prior to the desired effective date of the modification so as to allow sufficient time to prepare for and implement any such modification. By mutual agreement the parties may modify the service if necessary to respond to changing conditions.

6. Compensation: The parties agree that Duke shall remit to the City a lump sum payment of \$350,000.00 on or before August 1, 2012 for the one (1) year period August 1, 2012 through July 31, 2013.
7. Continuation of Service:  
During the first six months of this agreement, Duke University and the City of Durham, in cooperation with Triangle Transit Authority (TTA), agree to discuss the terms and conditions of extending the BCC beyond July 31, 2013. Such discussion shall include the relationship of the BCC to other transit services provided by Duke University Transit, Durham Area Transit Authority (DATA), TTA and to the Duke GoPass program.
8. Default: In the event either party claims non-performance or default by the other party of any of the terms and conditions contained herein, the party claiming non-performance or default shall so state in writing and deliver said notice to the other party within ten (10) business days of the event or occurrence on which the claim is based. The non-performing or defaulting party shall then have twenty (20) business days to correct and/or remedy such non-performance or default to the extent it is possible to do so, or to explain, to

the satisfaction of claiming party, why no non-performance or default existed. Failure to do so on the part of the party alleged to have been non-performing or in default shall give the party claiming default the right to institute one or more actions at law or in equity to enjoin the defaulting party's failure to perform, to require specific performance of the Agreement and to immediately terminate the Agreement.

9. Notices: All notices required, and all communications made with respect to this Agreement shall be deemed to be made when deposited with the United States Postal Service, postage pre-paid, return receipt requested, and addressed as follows:

To Duke: Duke University  
Attn.: \_\_\_\_\_  
Address  
Address

To City: City of Durham  
Attn.: Mark D. Ahrendsen, Transportation Director  
101 City Hall Plaza  
Durham, NC 17701

or to such other person or address as may be designated from time to time in a notice sent to the other party for that purpose. Day to day communications by the City and Duke concerning the administration of this Contract and/or the provision of the transit services described herein shall be by and between the Transportation Director of the City and the \_\_\_\_\_ of Duke, or their designees.

10. Force Majeure: In the event the City is unable to perform the obligations of this Agreement, by reason of an act of God, war, riot, insurrection, fire, explosion, injunction, inability to obtain fuel, inability to obtain subsidy funding, government action, labor strike, order or decree of any court, casualty or other cause beyond the control of the City, then the City shall be excused from such failure to perform but shall recommence and continue to perform promptly after removal or cessation of such cause of delay.
11. Severability: If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be or become invalid or unenforceable, the remainder of this Agreement, or the application of other provisions shall not be affected thereby, but shall remain valid and enforced to

the fullest extent permitted by law. The City and Duke agree to substitute for such provision of this Agreement or application thereof determined to be invalid or unenforceable, such other provision as most closely approximates, in a lawful manner, such invalid or unenforceable provision.

12. Amendment: No alteration, amendment, change or addition to this Agreement shall be binding on either party unless reduced to writing and signed by each party.
13. Performance of Government Functions: Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit or impair the City from exercising or performing any regulatory, policy, legislative, governmental or other powers or functions pursuant to applicable law.
14. Choice of Law and Forum: This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the Laws of North Carolina.
15. Entire Agreement: This Agreement contains and represents the entire and integrated agreement between the parties pertaining to the subject matter of this Agreement, and supersedes any previous understandings, representations, commitments or agreements, oral or written. There are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties other than as set forth or referenced in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
City's finance officer

\_\_\_\_\_  
Date

CITY OF DURHAM

DUKE UNIVERSITY

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
President

ATTEST:

ATTEST:

By: \_\_\_\_\_ By: \_\_\_\_\_  
City Clerk Corporate Secretary  
NORTH CAROLINA ACKNOWLEDGMENT BY CITY OF DURHAM  
COUNTY of \_\_\_\_\_

I, a Notary Public in and for the aforesaid County and State certify that  
\_\_\_\_\_ personally appeared  
before me this day, and acknowledged that he or she is the City Clerk of the City  
of Durham, a municipal corporation, and that by authority duly given and as the act  
of the City, the foregoing agreement was signed in its corporate name by its City  
Manager, sealed with its corporate seal, and attested by its said City Clerk or  
Deputy City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

State of North Carolina ACKNOWLEDGMENT BY CORPORATION  
County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that  
\_\_\_\_\_ personally  
appeared before me this day and stated that he or she is the President of Duke  
University, a corporation, and that by authority duly given and as the act of the  
corporation, he or she signed the foregoing agreement with the City of Durham and  
the corporate seal was affixed thereto. This the \_\_\_\_\_ day of  
\_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

